

EXHIBIT 41

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

COPART, INC.,

Plaintiff,

vs.

Case No.: C 07 02684 CW

CRUM & FORSTER INDEMNITY,
COMPANY, UNITED STATES FIRE
INSURANCE COMPANY, and
DOES 1-10,

Defendants.

CERTIFIED
COPY

AND RELATED COUNTERCLAIMS.

DEPOSITION OF PATRICE G. McINTYRE

San Francisco, California

Wednesday, May 14, 2008

Reported by:

DIANE M. GALLAGHER

RPR, CSR No. Michigan 2191

JOB No. 86976

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

4 COPART, INC.,

5 Plaintiff,

6 vs.

Case No.: C 07 02684 CW

7 CRUM & FORSTER INDEMNITY,
8 COMPANY, UNITED STATES FIRE
9 INSURANCE COMPANY, and
10 DOES 1-10,

11 Defendants.

12

AND RELATED COUNTERCLAIMS.

13
14 Deposition of PATRICE G. McINTYRE, taken on
15 behalf of Defendant United States Fire Insurance
16 Company, at 601 California Street, 18th Floor,
17 San Francisco, California, beginning at 9:05 a.m.,
18 and ending at 2:50 p.m., on Wednesday, May 14,
19 2008, before DIANE M. GALLAGHER, Certified
20 Shorthand Reporter, Michigan No. 2191.
21
22
23
24
25

1 APPEARANCES:

2
3 For Plaintiff:

4 PILLSBURY & LEVINSON, LLP
5 BY: ERIC K. LARSON
6 Attorney at Law
7 The Transamerica Pyramid
8 600 Montgomery Street
9 Thirty-First Floor
10 San Francisco, California 94111
11 415-433-8000
12 E-mail: rlarson@pillsburylevinson.com
13

14 For Defendants:

15 BULLIVANT HOUSER BAILEY PC
16 BY: SAMUEL H. RUBY
17 Attorney at Law
18 601 California Street - Suite 1800
19 San Francisco, California 94108
20 415-352-2700
21 E-mail: samuel.ruby@bullivant.com
22

23 For the Witness:

24 LUCE FORWARD HAMILTON & SCRIPPS
25 BY: DENIS F. SHANAGHER
Attorney at Law
121 Spear Street - Suite 200
San Francisco, California 94105
415-336-4626
E-mail: dshanagher@luce.com

1 A Yes.

2 Q And you asked, Please provide a current
3 complete listing of all locations, and you indicate that
4 the current schedule on file with the insurance company
5 is attached.

6 Why, in connection with the renewal activity,
7 did Marsh need an updated schedule and property
8 Statement of Values?

9 A You always ask for updated exposure information
10 for preparation of renewal specifications.

11 Q And why do you do that?

12 A Well, you need to provide the underwriters with
13 the exposure information, what is being insured, to be
14 insured.

15 Q You went on to say, For each location please
16 indicate respective current property values for:
17 buildings/structures, building improvements, and some
18 other items. Do you see that?

19 A Yes.

20 Q What did you mean by current property values?
21 What type of values did you mean there?

22 A Replacement values for buildings or contents,
23 tangible property.

24 Q If you could look at the attachment to this
25 exhibit, which is starting on the third page, this is a

1 A For the template that I created?

2 Q Well, let's see. Did you create a template
3 that had blanks for all of these lines and columns?

4 A I created the template. I don't remember that
5 I filled it in with values.

6 Q Do you remember anything about how the values
7 stated in this particular statement came to be in this
8 statement?

9 A They would have come from Copart.

10 Q When you asked Copart for information to
11 complete the building limit column, what did you ask for
12 to be put in that column?

13 A Replacement cost values.

14 Q And in the building improvements column, was
15 that also replacement cost value but only for
16 improvements?

17 A Yes.

18 Q For the 2002 statement or any earlier
19 statements, I won't hold you to a specific date, but no
20 later than the 2002 statement, do you recall any
21 discussions with Copart about how Copart would go about
22 calculating replacement cost values?

23 A I don't.

24 Q Did you ever give Copart any instructions on
25 how to do that?

1 A I did not.

2 Q Did Copart ever express to you any confusion
3 about how to go about calculating replacement cost
4 values?

5 A Not that I recall.

6 Q With respect to the listing of various
7 locations up through 2002, what was your request to
8 Copart as far as which locations it would list in the
9 Statement of Values?

10 MR. LARSON: Vague and ambiguous. Lacks
11 foundation.

12 Q (BY MR. RUBY) Did you ask Copart to give you
13 or to identify all of its locations?

14 A Yes, uh-huh.

15 Q Were there any exceptions to that rule that you
16 explained to Copart?

17 MR. SHANAGHER: Objection. Vague and
18 ambiguous.

19 THE WITNESS: No.

20 Q (BY MR. RUBY) Did you tell Copart there were
21 any locations or types of locations that they did not
22 need to identify to you?

23 A No.

24 Q With respect to the values that were reported
25 to you, were there any locations or types of locations

1 for which you told Copart they did not need to report
2 values?

3 MR. LARSON: Vague and ambiguous.

4 MR. RUBY: Do you understand the question?

5 THE WITNESS: No.

6 Q (BY MR. RUBY) No, you don't understand the
7 question or No to my question?

8 A Can you repeat the question, please?

9 Q Well, let me ask it this way: did you ever
10 tell Copart that they could identify a location to you
11 but that they did not need to list values for that
12 location?

13 MR. LARSON: Vague and ambiguous as to "need."

14 THE WITNESS: Not that I recall.

15 Q (BY MR. RUBY) To be more specific, did you
16 ever tell Copart that even if they had a building at one
17 of their locations, for some reason they would not have
18 to report a building value?

19 MR. SHANAGHER: Objection. Vague and
20 ambiguous.

21 THE WITNESS: Not that I recall.

22 Q (BY MR. RUBY) If you could take a look now at
23 Exhibit 3, please. This was marked at Mr. Rote's
24 deposition as an e-mail from Mr. Finigan to Mr. Rote
25 with a copy to Ms. McIntyre, and this exhibit begins

1 Q (BY MR. RUBY) Let's, for example, look at yard
2 number 36 where you wrote in your e-mail Change building
3 value from 450,000 to 750,000.

4 If you look at the attached Statement of
5 Values, can you tell if you, in fact, made that change,
6 that is you increased the building value from 450,000 to
7 750,000 for yard 36?

8 A Yes.

9 Q If Mr. Rote had told you that for yard 105
10 there was a building there that had a certain value,
11 would you have added that value for the building column
12 for yard 105?

13 MR. LARSON: Calls for speculation.

14 THE WITNESS: Yes.

15 MR. RUBY: Okay. We have been going about an
16 hour. Why don't we take a break?

17 (Whereupon, a short break from

18 10:00 a.m. to 10:10 a.m. was taken.)

19 Q (BY MR. RUBY) Okay. Everyone is ready. Back
20 on the record. Ma'am, still on Exhibit No. 8,
21 following question on your note stating, All other new
22 locations indicate that show no values, nothing there
23 yet, was that your understanding at the time you wrote
24 this e-mail?

25 A Apparently, it was.

1 Q Now, I have⁴ asked you this question in
2 connection with the previous renewal, and I will ask it
3 to you now about this 2004 renewal.

4 At any time in the course of the 2004 renewal,
5 did you tell Copart that it did not have to provide
6 building values for yard 105?

7 A No.

8 Q If you could look at Exhibit 13. Is this a
9 letter from you to Mr. Rote?

10 A Yes.

11 Q And is this a letter concerning the 2005
12 renewal?

13 A Yes.

14 Q Now, under the heading of Location Schedule and
15 Property Statement of Values, you asked, For each
16 insured location, please provide the respective current
17 replacement cost property values for
18 building/structures. Do you see that?

19 A Yes.

20 Q You said there for "each insured location."

21 At any time during the 2005 renewal, did you
22 tell Copart that it did not have to provide current
23 replacement cost property values for buildings at any
24 particular location?

25 A No.

1 Q Specifically, at any time during the 2005
2 renewal, did you tell Copart that it did not have to
3 provide to you current replacement cost property values
4 for buildings at yard 105?

5 A No.

6 Q If you could look at Exhibit 10, please.
7 Exhibit 10 starts with, at the bottom an e-mail from Mr.
8 Rote to you, concerning computer equipment at a Las
9 Vegas location, and then you replied to him.

10 Could you just review the e-mails briefly and
11 let me know when you're finished, please?

12 A Okay.

13 Q So in reply to his message, you asked him to
14 confirm the amount of computer value to add to the Las
15 Vegas location?

16 A Yes.

17 Q And why is that information about the computer
18 value something that you felt you would inform the
19 underwriters about?

20 MR. LARSON: Lacks foundation.

21 THE WITNESS: To update them.

22 Q (BY MR. RUBY) Did you have an expectation that
23 that information might be of interest to underwriters
24 for any particular reason?

25 A I don't know. I just wanted to update them.

1 your source for that information?

2 A I don't recall.

3 Q Putting apart the specifics, i.e. whether it
4 was an e-mail or a conversation or something like that,
5 who was the source of the information regarding the
6 property values at the Elgin and Reno locations?

7 A Simon Rote, I believe.

8 Q Now, you will recall that yard 105 was also on
9 the schedule you had forwarded to Miss Streacker?

10 A Uh-huh. Yes.

11 Q Did Mr. Rote at the time of your, of this
12 correspondence with Miss Streacker, had Mr. Rote
13 provided you with any information regarding any building
14 values for yard 105?

15 A No.

16 Q If he had given you a building value for yard
17 105 at this time, and if he had asked you to report that
18 to underwriters, would you have done so?

19 MR. LARSON: Calls for speculation.

20 THE WITNESS: Yes.

21 Q (BY MR. RUBY) Now, when you said, for Elgin,
22 Reno, please also include these non inventory property
23 values at this time, did you mean that you wanted Miss
24 Streacker to include those property values in the
25 endorsement she was going to issue, which we discussed a

1 A Yes.

2 Q Did you ever receive a response from Ms.
3 Streacker to this e-mail? Do you recall?

4 A I don't recall.

5 Q Do you have any understanding as to how the
6 premiums were calculated on the Copart policies --
7 property policy?

8 MR. RUBY: Vague as to time.

9 Q (BY MR. LARSON) At any time?

10 A I don't completely understand the underwriting
11 process of the carrier.

12 Q Do you have any understanding or is your answer
13 no?

14 A Yes.

15 Q You do have an understanding?

16 A I have some understanding of the factors.

17 Q Why don't you tell us what your understanding
18 is?

19 MR. SHANAGHER: Objection. Overly broad. Go
20 ahead.

21 THE WITNESS: The values are a factor, what the
22 values are.

23 Q (BY MR. LARSON) Any other factors?

24 A What kind of values they represent, whether
25 they're building contents, time element, where the

1 values are.

2 Q Let's look at Exhibit 33. That would be in
3 the book. Were you aware that the 2004 to 2005 policy
4 was, in fact, endorsed at yard 105 as a location with
5 the Miami address?

6 MR. SHANAGHER: Objection. Vague and ambiguous
7 as to "endorsed" in this context.

8 THE WITNESS: I am not aware of that, no.

9 MR. LARSON: Let's mark this as next in order.
10 (Deposition Exhibit No. 48 was marked for
11 identification by the court reporter.)

12 Q (BY MR. LARSON) Marked as Exhibit 48 is the
13 2004 to 2005 policy. If you look at, very close to the
14 end, Ms. McIntyre, page POL 0215?

15 MR. SHANAGHER: Second to last, third to last
16 page.

17 THE WITNESS: Okay.

18 Q (BY MR. LARSON) If you look at, which is a
19 Change Endorsement heading, change description, about
20 the middle of that box?

21 A Yes.

22 Q It says 11858 Northwest 36 Avenue, Miami,
23 Florida 33167. Do you see that?

24 A Yes, I see that.

25 Q Okay. And the effective date July 31, '05?

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of Michigan, and Notary Public
3 of the State of California, do hereby certify:

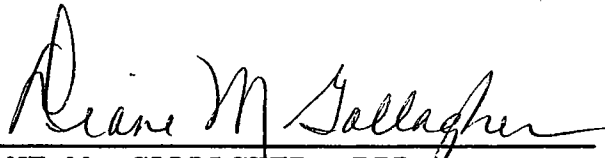
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth; that
6 any witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand
9 which was thereafter transcribed under my direction;
10 that the foregoing transcript is a true record of the
11 testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review of
15 the transcript [☒] was [☐] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: MAY 29 2008

23 
24 DIANE M. GALLAGHER, RPR
25 MI CSR No. 2191
CA NOTARY PUBLIC No. 1419258